A

Tan Sri Dato' Sri Muhammad Shafee bin Md Abdullah & Ors v Saerah bt Saad Lobb & Anor

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-521–09 OF 2023
ROZ MAWAR J
15 JULY 2025

C

Civil Procedure — Pleadings — Amendment of — Application to amend defence and counterclaim — Whether amendments merely consequential and for clarifications — Whether additions would change initial nature of claim — Whether amendments should be allowed

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This was the first defendant's application to amend her defence and counterclaim. The initial defence and counterclaim were proposed to be deleted and re-authored for clarity, and no inconsistent position had been taken. It was argued that no injustice would be caused to the plaintiffs but on the other hand, the first defendant would be prejudiced if deprived of the opportunity to set out better particulars in her pleadings. The plaintiffs objected to the amendments, contending, inter alia, that: (a) some judicial admissions were now deleted with the amendments to the defence and counterclaim; (b) the first defendant had not provided any cogent reason for the delay to amend pleadings; and (c) the nature of the defence and counterclaim would change as it would add a claim based on purported unlawful interference with the first defendant's proprietary interest.

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Held, allowing the application with costs:

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(1) The proposed amended paras (1) to (30) were allowed. They did not change the nature of the first defendant's defence. There were not deleted or subtracted 'judicial admissions' as claimed by the plaintiffs. All were incorporated in the amendments. All proposed amended paragraphs in the amended counterclaim were allowed except for: (a) the proposed amended para 34(ii) as this was not pleaded before and was not a claim to mount on; (b) the proposed paras 39, 40, 41 and 42 for the same reasons as to allow these additions would change the initial nature of the first defendant's claim; (c) declarations prayed in para 45(i) and (ii) were not prayed for initially and were natural consequent to the determination of the plaintiffs' claims. Findings would be made and there was no necessity for such declarations; (d) for prayers stipulated in paras 45(iv)(a), (b), (c), (d) and (e), these were not initially prayed for and changed the nature and substratum of the first defendant's claim; (e) the proposed para 45(v) to

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be replaced with the initial/original para 64.5 of the first defendant's counterclaim; and (f) as for prayer stated in para 45(vii), the court allowed the first defendant to seek for costs should the decision be favourable to her, but not on an indemnity basis. It was not pleaded initially (see para 5).

[Bahasa Malaysia summary

Ini adalah permohonan defendan pertama untuk meminda pembelaan dan tuntutan balas beliau. Pembelaan dan tuntutan balas asal dicadangkan untuk dipadamkan dan ditulis semula bagi kejelasan, dan tiada kedudukan yang bercanggah telah diambil. Ia adalah dihujahkan bahawa tiada ketidakadilan akan berlaku kepada plaintif-plaintif tetapi sebaliknya, defendan pertama akan diprejudiskan sekiranya dinafikan peluang untuk mengemukakan butir-butir yang lebih jelas dalam pliding beliau. Plaintif-plaintif telah membantah pindaan-pindaan tersebut, dengan berhujah, antara lain, bahawa: (a) beberapa pengakuan kehakiman kini dipadamkan dengan pindaan terhadap pembelaan dan tuntutan balas; (b) defendan pertama tidak memberikan sebarang alasan kukuh bagi kelewatan untuk meminda pliding; dan (c) sifat pembelaan dan tuntutan balas akan berubah kerana ia akan menambah suatu tuntutan berasaskan kepada campur tangan tidak sah yang kononnya melibatkan kepentingan proprietari defendan pertama.

Diputuskan, membenarkan permohonan dengan kos:

(1) Perenggan pindaan yang dicadangkan (1) hingga (30) dibenarkan. Ia tidak mengubah sifat pembelaan defendan pertama. Tiada pengakuan kehakiman yang dipadamkan atau ditolak sebagaimana didakwa oleh plaintif-plaintif. Semuanya telah dimasukkan dalam pindaan-pindaan tersebut. Semua perenggan pindaan yang dicadangkan dalam tuntutan balas yang dipinda dibenarkan kecuali: (a) perenggan pindaan 34(ii) yang dicadangkan kerana ini tidak pernah diplidkan sebelum ini dan bukan suatu tuntutan yang boleh dibuktikan; (b) perenggan-perenggan 39, 40, 41 dan 42 yang dicadangkan atas alasan yang sama kerana membenarkan tambahan ini akan mengubah sifat asal tuntutan defendan pertama; (c) deklarasi yang dipohon dalam perenggan 45(i) dan (ii) kerana tidak pernah dipohon pada asalnya dan ia merupakan akibat semula jadi daripada penentuan tuntutan plaintif-plaintif. Penemuan akan dibuat dan tiada keperluan bagi deklarasi tersebut; (d) prayer yang dinyatakan dalam perenggan 45(iv)(a), (b), (c), (d) dan (e), kerana ini tidak pernah dipohon pada asalnya dan mengubah sifat serta substratum tuntutan defendan pertama; (e) perenggan pindaan 45(v) hendaklah digantikan dengan perenggan asal 64.5 tuntutan balas defendan pertama; dan (f) berhubung prayer yang dinyatakan dalam perenggan 45(vii), mahkamah membenarkan defendan pertama untuk menuntut kos sekiranya keputusan memihak kepadanya, tetapi bukan

atas dasar indemniti. Ia tidak pernah diplidkan pada asalnya (lihat perenggan 5).]

Cases referred to

Hong Leong Finance Bhd v Low Thiam Hoe and another appeal [2016] 1 MLJ 301; [2016] 3 MLRA 81; [2015] 8 CLJ 1, FC (refd)

Yamaha Motor Co Ltd v Yamaha (Malaysia) Sdn Bhd [1983] 1 MLJ 213; [1982] 1 MLRA 417; [1983] CLJ 428, FC (refd)

Legislation referred to

Rules of Court 2012 O 20 r 5(1)

Teh Eng Lay (with Thong Chan Yen and Yap Wen Han) (HL Lee & Co) for the plaintiffs.

Mervyn Lai Wei Shiung (with Wong Ying Ying and Faith Chow Mun) (Tommy Thomas) for the first defendant.

Muhd Izzhar Aiman bin Hamdan (with Norazlin Mohamad Yusoff) (Attorney General's Chamber) for the second defendant.

Roz Mawar J:

[1] This court notes that the trial for this case is fixed to commence on 5 January 2026 to 8 January 2026. This application is filed by the defendant well before, and no application for adjournment is sought. As per O 20 r 5(1) of the Rules of Court 2012 ('the ROC'), this court sets to consider the first defendant's application to amend her defence and counterclaim. The first defendant's pleaded defence to the plaintiff's claim is that there was no agreement concluded with the plaintiffs for the sale of the two pieces of leasehold lands as apparent by the absence of an executed sale and purchase agreement ('SPA').

[2] The counsel for the first defendant submitted that the proposed amended defence and counterclaim takes the same position. The initial defence and counterclaim filed on 2 November 2023 is proposed to be deleted and re-authored. It was clarified to this court that the re-authored pleadings were for clarity, and no inconsistent position has been taken. It was submitted that no injustice would be caused to the plaintiffs but on the other hand, the first defendant would be prejudiced if deprived of the opportunity to set out better particulars in her pleadings.

[3] The plaintiffs strenuously objected to the amendments — the primary grouse premised on the contention that some judicial admissions are now deleted with the amendments to the defence and counterclaim. Premised on that, counsel for the plaintiffs submitted that this application was not done in

good faith. The first defendant was accused of suppressing a purported offer to purchase dated 16 August 2024, which she had also failed to disclose to the Court of Appeal and the Federal Court during the hearings pertaining to the injunction order and the removal of private caveat. The plaintiffs alleged the first defendant had not provided any cogent reason for the delay to amend pleadings, counting the date from 16 August 2024 to the date of the filing of this application under encl 94 on 2 May 2025. The plaintiffs submitted that the nature of the defence and counterclaim would change as it would add a claim based on purported unlawful interference with the first defendant's proprietary interest.

[4] This court has in mind the principles of amendment of pleadings as upheld by the Federal Court in *Yamaha Motor Co Ltd v Yamaha (Malaysia) Sdn Bhd* [1983] 1 MLJ 213; [1982] 1 MLRA 417; [1983] CLJ 428 and *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2016] 3 MLRA 81; [2015] 8 CLJ 1:

(a) bona fide;

(b) whether prejudice is caused; and

(c) whether the amendments change the character and nature of the suit.

[5] A detailed examination of the initial defence and counterclaim filed by the first defendant and the proposed amended defence and amended counterclaim, this court makes the following orders:

(a) the proposed amended paras (1) to (30) are allowed. They do not change the nature of the first defendant's defence. There are no deleted or subtracted 'judicial admissions' as claimed by the plaintiffs. All are incorporated in the amendments;

(b) all proposed amended paragraphs in the amended counterclaim are hereby allowed except for the following:

(i) the proposed amended para 34(ii). This was not pleaded before and was not a claim to mount on;

(ii) the proposed paras 39–42 for the same reasons above. To allow these additions would change the initial nature of the first defendant's claim;

(iii) declarations prayed in para 45(i) and (ii) — were not prayed for initially. This court views them to be the natural consequent to the determination of the plaintiffs' claims. Findings will be made and there is no necessity for such declarations;

(iv) prayers stipulated in paras 45(iv)(a), (b), (c), (d) and (e). These

were not initially prayed for and change the nature and substratum of the first defendant's claim;

(v) the proposed para 45(v) to be replaced with the initial/original para 64.5 of the first defendant's counterclaim; and

(vi) as for prayer stated in para 45(vii), this court will allow the first defendant to seek for costs should the decision be favourable to her, but not on an indemnity basis. It was not pleaded initially.

[6] The amended defence and counterclaim is to be filed by end of today. The plaintiffs and the second defendant are granted two weeks until 29 July 2025 to file their reply.

[7] In the circumstances, costs of RM3,000 is ordered to be paid by the first defendant.

Application allowed.

Reported by K Selvaraju